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EVELYN LANGFORD

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

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1 Pursuant to Criminal Local Rule 32-5(c), Defendant Evelyn Langford files this  
 2 Reply to the United States' Sentencing Memorandum ("U.S. Mem."), Dkt. 17.<sup>1</sup> In this  
 3 Reply, Ms. Langford uses the same defined terms she first introduced in her original  
 4 Sentencing Memorandum ("Mem."), Dkt. 18.

5 **I. Ms. Langford's Mental Health Arguments are Consistent with the Statements  
 6 in Her Plea Agreement.**

7 In the United States' Sentencing Memorandum, the Government argues that the  
 8 conclusion of Dr. Lines regarding Ms. Langford's intent is "contradicted by the defendant's  
 9 admissions" in the Plea Agreement, including that she acted "corruptly and with the intent  
 10 to be influenced or rewarded." U.S. Mem. at 6 n.3.

11 To begin with, Ms. Langford emphasizes that she accepts responsibility for her  
 12 offense. Ms. Langford does not claim that she lacked criminal intent. Rather, she argues  
 13 that, at the time of the offense, she suffered from a significantly reduced mental capacity  
 14 that contributed substantially to the commission of the offense and that should be taken into  
 15 account as a part of "the nature and circumstances of the offense and the history and  
 16 characteristics of the defendant" pursuant to 18 U.S.C. § 3553(a)(1). *See* Mem. at 9-10.

17 Dr. Lines diagnosed Ms. Langford with PTSD and concluded that she suffered from  
 18 diminished mental capacity and impaired judgment at the time of the offense conduct.  
 19 Lines Report, at 7-8. In reaching this conclusion, Dr. Lines reviewed the statements made  
 20 in the Plea Agreement. *See id.* at 1. Dr. Lines nevertheless concluded that Ms. Langford's  
 21 "knowledge of the conduct as wrong was questionable" because her "cognitive capacity  
 22 was overwhelmed" and "her reasoning was substantially distorted." *Id.* at 7. At its heart,  
 23 Dr. Lines' conclusion regarding this issue is that the PTSD and the psychological pressure  
 24 resulting from her complex relationship with her father *substantially distorted* Ms.

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 26 <sup>1</sup> Consistent with Criminal Local Rule 32-5(c), in this Reply, Ms. Langford does not  
 27 directly address the Reply filed earlier today by the government (Dkt. 19), and instead  
 28 limits the arguments herein to the argument made in the government's original  
 Sentencing Memorandum (Dkt. 17) regarding Dr. Lines' report. Having reviewed the  
 government's Reply, however, Ms. Langford submits that nothing in this Reply is  
 inconsistent with or undercut by anything in the government's Reply.

1 Langford's reasoning related to the offense conduct. *Id.* That conclusion is not inconsistent  
 2 with the statements made in the Plea Agreement and should be considered as part of the  
 3 Court's analysis of the Section 3553(a)(1) factors.

4 In addition, Ms. Langford's admissions in the plea agreement are not inconsistent  
 5 with her arguments that she would satisfy the requirements of USSG Section 5K2.13  
 6 (whether viewed, by Section 5K2.13's terms, as a ground for "departure," or as a policy  
 7 statement under Section 3553(a)(5)). Courts have held that granting a departure based on  
 8 diminished mental capacity is not inconsistent with a finding that the defendant possessed  
 9 the requisite criminal intent. In *United States v. Zedner*, 401 F.3d 36, 52 (2nd Cir. 2005),  
 10 *rev'd on other grounds*, 547 U.S. 489 (2006), the Second Circuit stated, "[t]he defendant  
 11 could have acted with criminal intent so as to be guilty of a crime, while at the same time  
 12 suffering from a diminished mental capacity that would justify departure." *Id.* And in both  
 13 *United States v. Menyweather*, 447 F.3d 625, 632 (9th Cir. 2005) and *United States v.*  
 14 *Cantu*, 12 F.3d 1506, 1513 (9th Cir. 1993), discussed at greater length in Ms. Langford's  
 15 Sentencing Memorandum, the Ninth Circuit held that PTSD could constitute a basis for a  
 16 finding of diminished capacity, even though the defendants had pleaded guilty. Under the  
 17 Section 5K2.13 diminished mental capacity analysis, diminished capacity is present when  
 18 the defendant's ability to understand the wrongfulness of the behavior *or* to exercise the  
 19 power of reason is "significantly impaired." USSG § 5K2.13, app. note 1. Dr. Lines'  
 20 report supports a finding of diminished capacity due to reduced ability to understand  
 21 wrongfulness or exercise the power of reason.

22 This is different from saying that Ms. Langford had absolutely no capacity to know  
 23 wrong from right or exercise her powers of reason. The difference is one of degree, not  
 24 kind, and it distinguishes her diminished capacity argument and the facts that support it  
 25 from a claim that she lacked criminal intent altogether. Her admissions in the plea  
 26 agreement are accordingly not inconsistent with her arguments at sentencing. The fact that  
 27 she may have later concealed certain things from ASG and Department of Labor employees  
 28 (*see* U.S. Sent. Mem. at 6 n.3) does not mean that she did not have a significantly impaired

1 ability to understand the wrongfulness of her behavior or exercise her powers of reason at  
2 the time of the offense.

3 **II. Dr. Lines' Conclusions and the Arguments Based on Them are Otherwise  
4 Unchallenged.**

5 The Government's challenge to Dr. Lines' opinion is limited to his conclusion  
6 regarding Ms. Langford's ability to understand the wrongfulness of her conduct. This  
7 conclusion goes to Ms. Langford's ability to show she suffered from a "significantly  
8 reduced mental capacity" under the first prong of the test only. *See USSG § 5K2.13, app.*  
9 note 1 ("Significantly reduced mental capacity" means the defendant "has a significantly  
10 impaired ability to (A) understand the wrongfulness of the behavior comprising the offense  
11 or to exercise the power of reason; *or* (B) control behavior that the defendant knows is  
12 wrongful.") (emphasis added).

13 The Government does not otherwise challenge the opinions of Dr. Lines, including,  
14 notably, his diagnosis that Ms. Langford suffers from PTSD and his conclusion that she  
15 would have been able to prevent herself from engaging in the conduct under more  
16 psychologically intact conditions. Diminished capacity is present not only when the  
17 defendant has the inability to understand wrongfulness or exercise the power of reason; it is  
18 also present when the defendant has a "significantly impaired ability" to "control behavior  
19 that the defendant knows is wrongful." USSG § 5K2.13, app. note 1. Dr. Lines concludes  
20 that Ms. Langford's "ability to withstand engaging in the conduct was lacking." Lines  
21 Report, at 7. Ms. Langford therefore satisfies the second (independent) prong of the  
22 significantly reduced mental capacity analysis under Section 5K2.13 – a point the  
23 government has not disputed.

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